

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

MELVIN GARCIA, #01403-748

PLAINTIFF

v.

CAUSE NO. 1:17-CV-26-LG-RHW

FLOYD SPOTTS, ET AL.

DEFENDANTS

**ORDER ADOPTING REPORT AND RECOMMENDATION,
GRANTING MOTION FOR SUMMARY JUDGMENT,
AND DISMISSING CASE**

This cause comes before the Court on the [80] Report and Recommendation of United States Magistrate Judge Robert Walker entered in this cause on July 30, 2019. Magistrate Judge Walker reviewed the [67] Motion for Summary Judgment filed by Defendants Floyd Spotts, Kerwin Blount, and Richard W. Woodward in this *pro se* prisoner civil rights lawsuit. Magistrate Judge Walker recommends that the motion be granted because Plaintiff failed to exhaust administrative remedies prior to filing his complaint.

The Court received and reviewed Plaintiff's objection to the Report and Recommendation. For the reasons stated by the Magistrate Judge, and after an independent review of the record, a *de novo* determination of the issues, and having determined that the Magistrate Judge's findings are correct under applicable law, the Court concludes that the Report and Recommendation should be adopted as the finding of this Court.

Additionally, Plaintiff named another defendant – Angela Stockstill – and the executed return shows that she was personally served with process on August 25,

2017. (See Notice, ECF No. 32.) Stockstill did not answer or make an appearance in the case. During the two years after Stockstill was served, Plaintiff continued to prosecute his case in general, but he never moved for entry of default or took any other action in regard to Stockstill. The Court will therefore dismiss Plaintiff's claims against Angela Stockstill for his failure to prosecute them, pursuant to Fed. R. Civ. P. 41(b).

IT IS THEREFORE ORDERED AND ADJUDGED that the [80] Report and Recommendation of United States Magistrate Judge Robert H. Walker entered in this cause on July 30, 2019 should be, and the same hereby is, adopted as the finding of this Court.

IT IS FURTHER ORDERED AND ADJUDGED that the [67] Motion for Summary Judgment is **GRANTED**. Plaintiff's claims against Defendants Floyd Spotts, Kerwin Blount, and Richard W. Woodward are **DISMISSED** without prejudice.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff's claims against Defendant Angela Stockstill are **DISMISSED** without prejudice for failure to prosecute. Because there are no remaining claims to be adjudicated, the Clerk of Court may close this case. A final judgment will enter.

SO ORDERED AND ADJUDGED this the 17th day of September, 2019.

s/ Louis Guirola, Jr.

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE